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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JACOB CHESTER LAWRENCE REED,

Defendant and Appellant.

F062281

(Super. Ct. No. CRF31911)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. Eric L. DuTemple, Judge.

Eleanor M. Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Wiseman, J., and Cornell, J.

STATEMENT OF THE CASE

Appellant, Jacob Chester Lawrence Reed, waived his rights and pled guilty to a felony violation of receiving a stolen vehicle (Pen. Code, § 496d, subd. (a)). On August 12, 2010, the trial court granted Reed's motion to withdraw his plea. On October 7, 2010, the People filed a first amended information alleging that Reed feloniously took a vehicle (Veh. Code, § 10851, subd. (a), count one); feloniously received a stolen vehicle (Pen. Code, § 496, subd. (a), count two), and damaged or took a part from a vehicle, a misdemeanor (Veh. Code, § 10852, count three).

At the conclusion of a jury trial on February 24, 2011, Reed was found guilty of counts two and three, and acquitted of count one. The court denied Reed's motion for a judgment notwithstanding the verdict. On March 28, 2011, the court suspended imposition of sentence and placed Reed on probation for five years upon various terms and conditions including that he serve four months in jail. At the conclusion of a restitution hearing on April 8, 2011, the court ordered Reed to pay the victim, Jake Overholtzer, \$3,100 in restitution.¹

Reed's brief was filed pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). After review of the record, we affirm the judgment.

FACTS

In 2009, Gary Prout owned a 1982 four-door, one ton Chevrolet truck that he sold to Lawrence Thompson for \$500. Prout thought he had transferred title of his ownership to Thompson, but later found out he had not completed the paperwork. Prout gave no one permission to remove the truck's engine.

¹ At the restitution hearing, Overholtzer claimed \$2,500 in damages for the truck, \$9,000 for his tools, \$500 or \$600 for the toolbox, and \$600 for lost wages for time spent in court hearings.

When Thompson bought the truck from Prout, it ran but the motor was not very good. The motor was a 454 big block engine that Thompson removed, replacing it with a 468 big block engine from Overholtzer. Thompson initially began the project for himself to use the truck as a tow rig. Thompson traded the truck to Overholtzer for a 1994 or 1995 Chevrolet extended-cab pickup truck. Thompson took the pink slip he received from Prout for the 1982 truck and gave it to Overholtzer. Thompson described the truck as “kind of running, but – moveable.”

On January 28, 2010, Reed and codefendant Lyons came to Thompson’s home and purchased the original 454 engine from the 1982 truck for \$200. Reed and Lyons showed interest in the 1982 truck but Thompson told them it belonged to Overholtzer. Reed and Lyons looked at the 468 motor. Although Thompson started the truck, it did not sound very good. Because the truck did not have a battery, Thompson temporarily borrowed another battery to start the truck.

When Thompson went to work at 5 a.m. the next morning, the 1982 truck was missing. At about 9 a.m., Thompson called Overholtzer and learned that Overholtzer had not picked up the truck. Although Overholtzer asked Thompson to report the truck as stolen, Thompson did not do so because it was not his truck. Thompson did not like Overholtzer and did not care if his truck was stolen.

Thompson delivered the 454 engine to Reed on February 2, 2010. Thompson looked at a big block Chevrolet motor Lyons and Reed had put into Lyon’s truck and described it as “clean.” Thompson could not tell whether it was a 468 engine without pulling it out of the truck.

Overholtzer knew both defendants. Overholtzer obtained the 1982 Chevrolet truck by trading a 1995 Chevrolet extended-cab truck for it. Overholtzer obtained the 468 big block engine from a customer who brought in a 1972 Blazer that had been in an accident. The Blazer was totaled, but the engine was in good condition. Thompson replaced the original motor in the 1982 truck with the 468 motor. Thompson obtained the truck from Prout, replaced the motor, and had problems making it run properly because

of a problem with the carburetor. The 1982 truck remained at Thompson's home until it was taken.

Overholtzer had a toolbox in the truck with all of his construction tools. The toolbox was not bolted down and was missing when the truck was recovered. The truck and the toolbox were not insured.² When Overholtzer learned that Thompson had not reported the truck as stolen, Overholtzer filed his own report on February 2, 2010. Although Overholtzer acquired ownership of the 1982 truck and the title in September 2009, the title document indicating the transfer to him was executed by him on February 2, 2010, the date that he reported the truck as stolen.

The truck was found off the side of a canyon near Cherry Lake. Overholtzer never gave Lyons or Reed permission to take the truck. Overholtzer did tell Lyons prior to the recovery of the truck that if Lyons brought the truck back, Overholtzer would not press charges. Some missing parts to the truck were found at Reed's home. Overholtzer later saw his engine in Lyon's vehicle.

California Highway Patrol Officer Paul Mote investigated the case. When Mote initially talked to Reed, Reed denied any knowledge about Overholtzer's truck and said he obtained the 468 engine from a guy at AutoZone. When Mote asked Reed about parts on his property that appeared to match Overholtzer's truck, Reed admitted that he had been lying.

Reed told Mote that he and Lyons went to Thompson's home and made a deal on the 454 engine that was unrelated to the 1982 truck. Thompson told Reed that the county was on him for all the vehicles on his property. According to Reed, Thompson told Reed and Lyons that all he wanted from the truck was the front axle assembly. Thompson gave them permission to take the truck if they brought back the front axle. Reed and

² Although the toolbox had originally been in the truck Overholtzer swapped for the 1982 truck, Thompson moved the toolbox to the 1982 truck. Overholtzer believed the tools were worth \$5,000 and that his total losses were \$13,000.

Lyons could take any other parts from the truck and then Thompson would scrap the rest of it.

Reed told Mote he removed the engine, front axle assembly, transmission and front clip then returned the truck to its location across the street from Thompson's residence. Overholtzer did not report that there was a missing toolbox.

On February 2, 2010, Officer Joshua Mahaney went to Overholtzer's home to take a stolen vehicle report. Overholtzer had a copy of the pink slip that was signed over to him. The date on the back of the document was dated February 2, 2010. Overholtzer told Mahaney that there was a chrome toolbox full of construction tools bolted onto the bed of the truck. Overholtzer placed a total value on his missing property of \$15,000.

Robert Smith was the fiancé of Reed's mother. Smith testified that Reed and Lyons came home one day saying they had gotten a good deal on a truck they purchased from Thompson. The defendants told Smith they were going to remove certain items from the truck and return it to Thompson early the next morning.

Reed testified that he went to Thompson's home with Lyons to look at a 454 motor that he had for sale. Reed explained that it was Thompson who wanted to show them the 1982 truck with a 468 motor. Thompson offered a deal on the truck because it was parked across the street and he had to scrap it because he had too many vehicles on his property. Thompson told the defendants to take the motor, the transmission, transfer case, and various small parts. In exchange, Thompson wanted the front axle. After taking the parts, they agreed to take the truck back to Thompson the next day so he could get it to the scraper.

Lyons and Reed brought the truck to Reed's house and began to dismantle it. Reed believed Thompson owned the truck. There was no toolbox in the back of the truck. The two then towed the truck back to Thompson's home. Thompson came by four or five days later and said the motor looked good in Lyons's truck without mentioning that the 1982 truck had been reported as stolen.

Reed admitted that he lied when Officer Mote came to question him because he was scared after Mote said the truck was stolen and someone would go to jail. Reed told Mote that he and Lyons had permission from Thompson to take parts from the truck.

Lyons testified that he had worked for Overholtzer for a few months prior to this incident, but quit because Overholtzer engaged in shady transactions. The two had been friends for several years. Lyons went to Thompson's home and looked at the engine Thompson had just installed in his truck. Thompson said the truck was his. Thompson gave Lyons a price of \$2,000 to buy the engine. Because the engine was not running, Lyons was not that interested in it.

Thompson took Reed and Lyons through his yard about a month later. The yard was disorganized, like a junk yard. Thompson claimed Overholtzer had cheated him earlier over a vehicle. Lyons could tell Thompson did not like Overholtzer. Thompson showed Lyons the 1982 truck without mentioning that it belonged to Overholtzer. Thompson said he was trying to work out a trade but could not get the motor running and was ready to scrap the truck.

Thompson started the truck. Lyons told Thompson that he wished he could take the engine off Thompson's hands. Thompson said he was going to have to scrap the whole truck, Thompson said he had been working on the engine for a long time and could not get it to start. Thompson made a deal with Lyons that Thompson would get some parts from the truck, including the front axle and the truck shell, in exchange for any parts Lyons and Reed wanted to take. Lyons drove the truck to Reed's home.

Lyons did not think the truck belonged to Overholtzer. Lyons and Reed took the parts they wanted and returned the truck to Thompson. Lyons never saw a toolbox on the truck, but saw a couple of polished aluminum toolboxes on Thompson's property.

APPELLATE COURT REVIEW

Reed's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the

declaration of appellate counsel indicating that Reed was advised he could file his own brief with this court. By letter on October 11, 2011, we invited Reed to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.